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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,468	02/12/2002	James F. McGuckin JR.	1908	8951
7590	07/28/2004		EXAMINER	
			MAIORINO, ROZ	
			ART UNIT	PAPER NUMBER
			3763	
DATE MAILED: 07/28/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/074,468	MCGUCKIN ET AL.	
	Examiner Roz Maiorino	Art Unit 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 01 July 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 11-16, 19 and 28-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 28 and 30 is/are allowed.
- 6) Claim(s) 11-16, 19 and 29 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/24/04
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: applicant fails to describe what first and second retention member are.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second retention members must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the

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changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 11-16, 19 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent NO. 6730061 to Cuschieri et al.

Cuschieri teaches a surgical apparatus with a housing a hollow elongated member 11 extending from the housing a fist and second tines 15/17/16 position in the elongated member, exact of the tines having a lumen and at least one opening communication with the lumen for deliver lying fluid to the lesion, the fist and second times movable between a retracted position and deployed positions. An actuator operatively associated with the tines the actuator movable in a first direction to move the first and second times from the retracted position to the first deployed position. (Figures 5a-5b)

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4. Claims 11-16, 19, 29 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent NO. 6432092 to Miller.

Miller teaches a surgical apparatus with a housing a hollow elongated member extending from the housing a fist and second tines position in the elongated member, exact of the tines having a lumen and at least one opening communication with the lumen for deliver lying fluid to the lesion, the fist and second times movable between a retracted position and deployed positions. An actuator operatively associated with the tines the actuator movable in a first direction to move the first and second times from the retracted position to the first deployed position. (Figures 4—9)

Allowable Subject Matter

5. The indicated allowability of claims 11-16, 19, 29 is withdrawn in view of the newly discovered reference(s) to US Patent NO. 6432092 to Miller and US Patent No. 6730061. Rejections based on the newly cited reference(s) follow.

6. Claims 28, 30 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Maiorino whose telephone number is 703-305-2336. The examiner can normally be reached on 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RM



MICHAEL J. HAYES
PRIMARY EXAMINER